

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.4 OF 2004

Commissioner of Central Excise .. Appellant.

V/s.

M/s.Mahindra & Mahindra (TD) .. Respondent.

Mr.R.V. Desai, senior advocate for the appellant.

Mr.Madhur Baya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 7TH JUNE, 2006.

P.C. :

Heard learned counsel for the rival parties.
Perused appeal memo with other documents.

2. The appellant has raised following substantial questions of law :

1. Whether the CESTAT was correct in confirming the order-in-Appeal, reducing the mandatory penalty imposed under Section 11AC of Central Excise Act, 1944 from Rs.13,36,453/- to Rs.1,00,000/- ?

2. Whether the penalty imposed under Section 11AC is a mandatory penalty equal to the duty demanded under proviso to Section 11A or is the maximum imposable penalty ?

2. The present appeal is at the instance of the Revenue. In our considered opinion, this appeal itself is not maintainable, since the impugned order is in

favour of the Revenue. The Revenue can hardly said to be aggrieved by the impugned order. By the impugned order appeal filed by the respondent came to be dismissed which the Revenue was opposing before Tribunal.

3. It is needless to mention that if the revenue has challenged the order of the first appellate authority before the tribunal reducing penalty and if that appeal has met with adverse order, then it would be open for the revenue to challenge that order by filing independent appeal. However, the question involved in their appeal cannot be allowed to be raised in the present appeal.

4. In the result, the appeal is misconceived. Hence, dismissed on the ground of locus with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)